IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.53 OF 2006

M/s.S.Kumars Online Ltd. ...Petitioner.

Vs.

Shri.Prakash B. Awatramani. ...Respondents.

Mr.M.N.Ramlingaih, for Petitioner.

Mr.S.C.Gupte i/b. V.C.Panjwani, for Respondent.

CORAM: D.K.DESHMUKH, J.

DATED: 25th April,2006

P.C.:-

1. By this petition, the petitioner challenges the Award made by the sole Arbitrator dated 29.9.2005. By the Award impugned, the learned Arbitrator has directed the petitioner to pay (i) Rs.1,37,335/- by way of refund, (ii) Rs.1,00,000/- by way of business losses. The learned Arbitrator has also directed the petitioner to pay interest at the

rate of 10% per annum from 8.11.2002.

2. The learned Counsel appearing for respondent-claimant states that the respondent gives up his claim to the amount of Rs.1,00,000/- (Rupees One lakh only) awarded by the learned Arbitrator as business losses. The statement is accepted. In view of this statement the Award in so far as awarding of Rs.1,00,000/- towards the business losses is set aside. The learned Counsel appearing for the respondent-claimant states that the respondent claimant does not claim any interest on the amount of Rs.20,000/- out of the amount of Rs.1,37,335/- (Rupees One lakhs Thirty Seven thousand Three hundred thirty five only) by way of refund. The statement is accepted. In view of this statement, now interest will be payable by the petitioner to the respondent on the amount of Rs.1,17,335/- (Rupees One lakh Seventeen thousand Three hundred and thirty five only) at the rate of 10% per annum from 8.11.2002 and Rs.20,000/- will be payable without any interest. In view of the concessions made by the learned Advocate appearing for the respondent, the only debate before me is Whether in view of clause 18 of the Contract interest was not chargeable on the entire amount of

refund i.e. Rs.1,37,335/- or only on the amount of Rs.20,000/- which is the amount of balance. Clause 18(a) is relevant which reads as under:-

> “18(a) The Company shall within 30 days of the termination of this Agreement for any reason whatsoever, refund without interest the amount deposited with it as Balance, to the Franchisee on termination of this Agreement by either party for any reason whatsoever after deducting therefrom, any sums of money as may be due and payable, if any to it by the Franchisee.

Perusal of the above quoted clause shows that while refunding the amount, the petitioner is not liable to pay interest on the amount which lies in balance. The terms "balance" is defined by clause 1.3 of the Contract which reads as under:-

> “1.3 “Balance” shall mean the refundable amount of Rs.20,000 (Rupees Twenty Thousand) to be deposited and kept deposited throughout the term of this Agreement by the Franchisee with the Company.”

Perusal of the definition of the term quoted above shows that the balance is that amount which is refundable from the amount of Rs.20,000/- which is

given in deposit. Therefore, combined reading of clause 1.3 and clause 18 shows that while refunding the amount the petitioner is not liable to pay interest on the amount which is to be refunded from the amount of deposit i.e. Rs.20,000/-. According to the petitioner on the entire amount of Rs.20,000/- out of total amount of Rs.1,37,335/- interest would not be payable. In my opinion, the submission made by the learned Counsel appearing for the petitioner is well founded and therefore, interest would be payable on the amount of Rs.1,17,335/- as observed above. The petition is disposed of.